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issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.21 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 calendar days after completion of proceedings on the application. The initial decision of the adjudicative officer shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Department's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6799, Mar. 3, 1988]

§ 18.22 Agency review.

Either the applicant or agency counsel may file a petition for review of the initial decision on the fee application, or the Department may decide to review the decision on its own initiative. The petition must be filed with the General Counsel, Office of the Assistant General Counsel for Administration, Rm. 5882, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, not later than 30 calendar days after the initial decision is issued. For purposes of this section, a document will be considered filed with the General Counsel as of the date of the postmark (or for government penalty mail, as shown by a certificate of mailing), if mailed, or if not mailed, as of the date actually delivered to the Office of General Counsel. A petition for review must be accompanied by a full written statement in support thereof, including

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a precise statement of why the petitioner believes the initial decision should be reversed or modified, and proof of service upon all parties. A response to the petition may be filed by another party to the proceeding and must be filed with the General Counsel at the above address not more than 30 calendar days after the date of service of the petition for review. The General Counsel may request any further submissions deemed helpful in resolving the petition for review. If neither the applicant nor agency counsel seeks review and the Department does not take review on its own initiative, the initial decision on the application shall become a final decision of the Department 30 calendar days after it is issued. Whether to review a decision is a matter within the discretion of the General Counsel. If review is taken, the General Counsel will issue the Department's final decision on the application or remand the application to the adjudicative officer for further proceedings. The standard of review exercised by the General Counsel shall be that which was required for the highest level of Departmental review which could have been exercised on the underlying covered proceeding.

[53 FR 6799, Mar. 3, 1988]

§ 18.23 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 18.24 Payment of award.

An applicant seeking payment of an award by the Department shall submit a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts to the General Counsel, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 5870, Washington, D.C. 20230. The Department will pay the amount awarded to the applicant within 60 calendar days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been

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sought by the applicant or any other party to the proceeding.

[47 FR 13510, Mar. 31, 1982, as amended at 53 FR 6800, Mar. 3, 1988]

PART 19—REFERRAL OF DEBTS TO THE IRS FOR TAX REFUND OFFSET

Sec.

- 19.1 Purpose.
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AUTHORITY: 31 U.S.C. 3720A; Public Law 98-369; 98 Stat. 1153.

SOURCE: 58 FR 39653, July 26, 1993, unless otherwise noted.

§ 19.1 Purpose.

This part establishes procedures for the Department of Commerce (DOC) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to the DOC. It specifies the agency procedures and the rights of the debtor applicable to claims for payment of debts owed to the DOC.

§ 19.2 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(4) With respect to which, the DOC has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, the DOC has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by the DOC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00;

(6) With respect to which, the DOC has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of taxes;

(7) Is at least \$25.00;

(8) With respect to which, all other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402-6 relating to the eligibility of a debt for tax refund offset have been satisfied.

§ 19.3 Administrative charges.

In accordance with 4 CFR part 102, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 19.4 Notice requirement before offset.

A request for a reduction of an IRS tax refund will be made only after the DOC makes a determination that an amount is owed and past-due and provides the debtor with sixty (60) days written notice. The DOC's notice of intention to collect by IRS tax refund offset (Notice of Intent) will include:

(a) The amount of the debt;

(b) A statement that unless the debt is repaid within sixty (60) days from the date of the DOC's Notice of Intent, DOC intends to collect the debt by requesting that the IRS reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the